

Planning Committee

30 May 2019

Reference:
APP/19/00146

Area Team:
**Development
Management Team**

Case Officer:
Mr A Siddall

Ward:
Hoylake and Meols

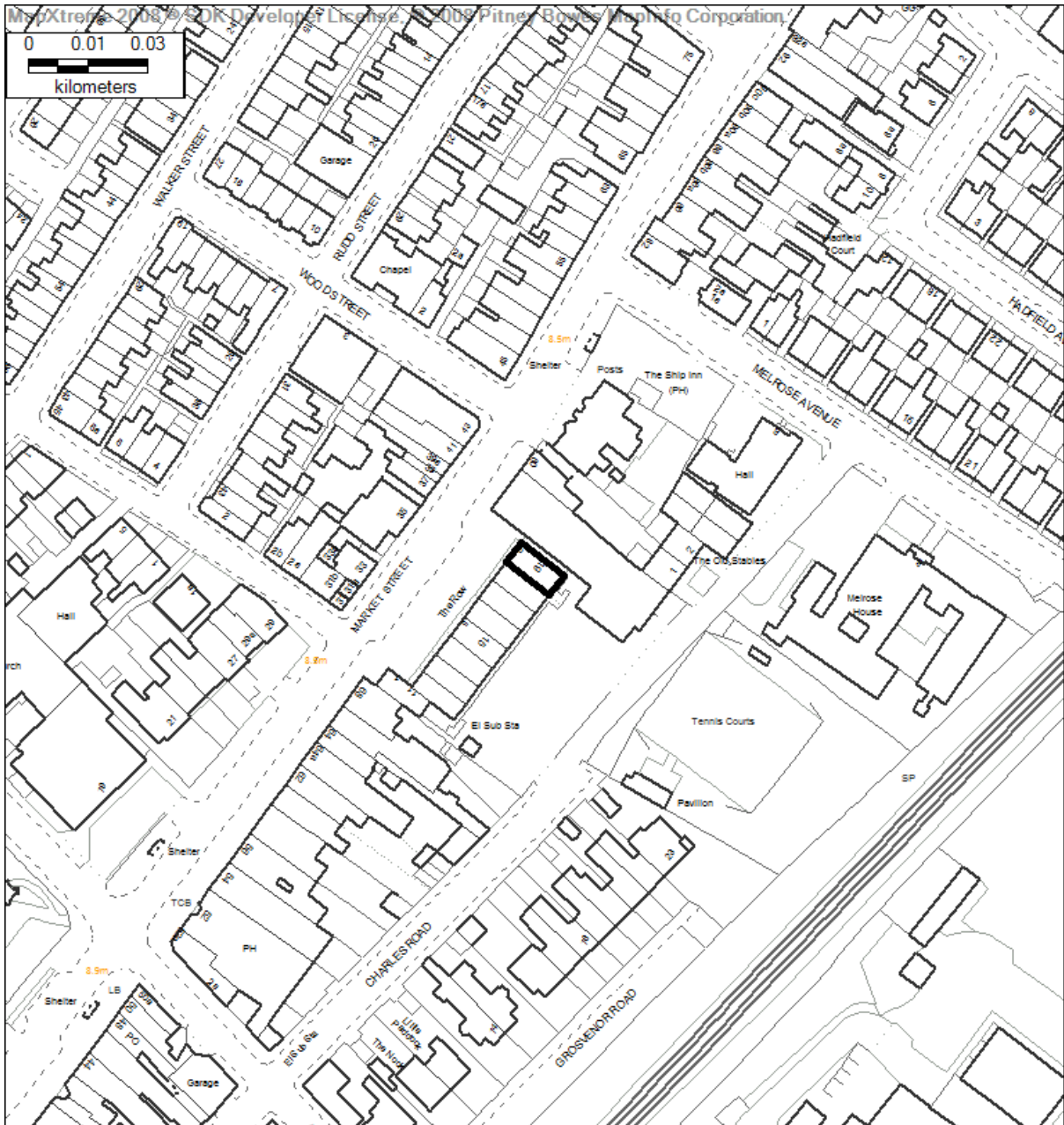
Location:
Proposal:

9 THE ROW, MARKET STREET, HOYLAKE, CH47 3BB
Variation of condition 2 of planning permission APP/10/00746 (Change of use from retail unit to cafe/restaurant) to allow extended opening hours of 08:00 to 23:30 Monday to Sunday (existing permitted opening hours 08:00 to 18:00 Monday to Saturday)

Applicant: SK Real Estate
Agent : SK Real Estate

Qualifying Petition: Yes, Number of Signatures: 26

Site Plan:



Development Plan designation:

Key Town Centre

Planning History:

Location: Mobility Market Place, 9 The Row, MARKET STREET, HOYLAK, CH47 3BB
Application Type: Full Planning Permission
Proposal: Change of use from A1 (shop) to A3 (tea rooms) no structural work being done, internally or externally
Application No: APP/10/00746
Decision Date: 09/08/2010 12:04:33
Decision Type: Approve

Condition 2 of the above planning permission restricted opening hours to 08:00 to 18:00 Monday to Saturday and required the premises to remain closed on Sundays and bank holidays. As these were the hours asked for by the applicant, these were the hours conditioned. No judgement was made by the Case Officer in 2010 on the acceptability of the premises opening later into the evening or at the weekends and therefore it would be incorrect to say that the condition was placed due to any later opening being harmful to nearby residents. As an earlier application (below) dating from 2003 for the use of the premises as a hot food take away was withdrawn, the current application before members is the first time the effect of later opening hours at this unit on amenity has been considered by the Local Planning Authority.

Location: Vacant Shop, 9 The Row, Market Street, Hoylake, Wirral, CH47 3BB,
Application Type: Full Planning Permission
Proposal: Change of use on the ground floor to A3 use (Hot food take-away).
Application No: APP/03/06454
Decision Date: 20/07/2009
Decision Type: Withdrawn

Summary Of Representations and Consultations Received:

1.0 WARD MEMBER COMMENTS

1.1 Councillor Andrew Gardner requests that if officers are minded to recommend approval, the application is referred to Planning Committee for the following reasons:

1. Public order issues and nuisance/noise associated with an 11:30pm licence; and
2. The building construction being unsuitable for a mixed use of residential and late night leisure. The occupants above would greatly have their peaceful enjoyment disrupted.

2.0 SUMMARY OF REPRESENTATIONS

2.1 Having regard to the Council's guidance on publicity for planning applications. Notifications were sent on 06 February 2019 to 15 neighbouring occupiers and on 11 February 2019 a notice was posted to the front of the site. The deadline for receipt of public comments was 06 March 2019.

REPRESENTATIONS

At the time of writing six representations in objection have been received, including one qualifying petition in objection attracting 26 signatures. The planning considerations raised can be summarised as follows:

1. The later opening hours will result in an increase in noise and disturbance for local residents to the detriment of the peaceful enjoyment of their homes;
2. Further licensed premises in the locality increases the risk of anti-social behaviour;
3. There are enough late night premises in Hoylake
4. The premises are not large enough for use as a bar
5. The building is poorly soundproofed whilst cooking smells and noise and odour from people congregating outside and smoking will harm amenity at the residential properties above.

Some objections also cite a reduction in property value, inability to sell and inability to secure

a mortgage. These are not planning matters and should not be taken into account by members when reaching a decision on the merits of the application.

CONSULTATIONS

Highways - No objection;

Environmental Health - No objection;

Hoylake Community Planning Forum - No comments received and no request to extend the time limit for making comments.

3.1 Site and Surroundings

3.1.1 9 The Row is a ground floor commercial unit of approximately 75 square metres last used as a cafe within use class A3 (following the grant of consent for change of use from A1 retail in 2010) but currently vacant. The unit is located within the key town centre of Hoylake, as defined by saved policy SH1 of the Wirral Unitary Development Plan. Above the commercial premises is a residential flat in separate ownership with habitable room windows to the front and rear and its access taken via a rear external stair leading to a first floor deck. A number of other flats are also situated above the neighbouring commercial units.

3.1.2 The adjacent commercial unit to the north east is a Co-Op Supermarket with opening hours of 06:00 to 23:00 seven days a week. There are a mix of units within the remainder of The Row, three charity shops and a funeral director's office within use class A1 and with daytime opening hours, a clinic within use class D1 (with opening hours till 21:00), a hot food take away within use class A5 (with opening hours till 23:00) and two further vacant units. To the opposite side of Market Street are ground floor commercial units, some with residential accommodation above. To the rear of The Row is a private car park for staff, residents and patrons of the commercial units.

3.1.3 Nearby evening economy uses include the Ship Inn public house, Whitt's End Wine and Cocktail Bar (open until 23:30), the Co-Op supermarket (23:00), the A5 unit within The Row (23:00) Subway (58 Market Street, 20:00), Bookmakers (54 Market Street, 21:00), Hoylake Lights Public House (52 Market Street 00:00 Sun-Thurs 01:00 Fri-Sat) and Sainsbury's Local (22:00)

3.2 Proposed Development

3.2.1 Permission is sought to extend the evening opening hours of the premises from the current restriction of 18:00 Monday to Saturday, to 23:30 seven days a week. The variation of condition is to facilitate a new tenant taking on the unit and changing the concept of the business to a drinks led premises with a working name of 'Trappist House Cafe' specialising in continental beers with a tapas style 'small plates' food offering. In the justification for seeking to vary the condition the applicant considers that the property is located in the primary retail frontage of Hoylake in an area of continual activity from early morning to late evening with nearby evening uses generating customers arriving and departing on foot and by vehicle. The applicant notes that the adjacent Co-Op supermarket is open till 11pm and there are other A3 uses in the area with late evening opening hours.

3.2.2 Use Class A3 is defined as the use of premises for 'the sale of food and drink for consumption on the premises.' Where a premises selling alcoholic drinks also has a food offer it can operate under use class A3 with very few premises remaining solely as drinking establishments under use Class A4. Many premises commonly considered to be public houses would now operate under use class A3 due to the presence of a food service.

3.3 Development Plan

3.3.1 Saved Unitary Development Plan policy SH1 establishes a presumption in favour of development within the boundaries of key town centres for uses falling within classes A1 to A5 and advises that non-retail uses can make an important contribution to their vitality especially during the evenings when other shops are closed and 'dead' frontages are created by the use of security shutters. Non retail uses are also significant generators of travel demand and are therefore best located in these centres which enjoy a high degree of accessibility by non-car modes of transport.

3.3.2 The policy does include safeguards to ensure that any potential effect on amenity is fully considered and in particular requires A3 uses to include measures to mitigate smells and

internally generated noise; and that the cumulative effect of noise and disturbance from both existing and proposed A3 uses must not exceed a level likely to be detrimental to the amenity of the area. In all cases, any development within a key town centre should not cause nuisance or disturbance to neighbouring uses as a result of noise, parking or deliveries.

- 3.3.3 Saved Unitary Development Plan policy PO3 advises that development will only be permitted where noise from the proposal would not cause unacceptable intrusion or persistent nuisance. In considering such proposals the Authority will have regard to the location of the proposal in relation to existing noise sensitive premises, the existing overall levels of background noise in the locality, the level, tone, duration and regularity of noise likely to be emitted and the provision made within the proposals for the mitigation of noise. The policy advises that noise levels need to be considered in relation to local circumstances. Where background noise levels are already high such as within existing industrial or commercial zones or near an existing major road, the introduction of additional noise may not be significant.

3.4 Other Material Planning Considerations

- 3.4.1 Paragraph 80 of the National Planning Policy framework advises that planning decisions should help create the conditions in which business can invest, expand and adapt with significant weight placed on the need to support economic growth and productivity. Paragraph 85 requires planning decisions to support the role that town centres play at the heart of communities by taking a positive approach to their growth, management and adaptation. Paragraph 127 reminds Local Planning Authorities that decisions should create places that are safe, inclusive and accessible, which promote health and wellbeing, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion and resilience.

- 3.4.2 The Hoylake Neighbourhood Plan at policy HS1 supports uses within use classes A1 to A5 within the key shopping area as defined on the proposals map provided that an active frontage is maintained at ground floor level. Policy HS5 supports development proposals for 'early evening' activity related to 'high quality food and drink, arts and cultural uses and later retail trading' subject to the proposal being able to demonstrate that it would have no significantly adverse effect upon the amenities of the local area, particularly the amenities of local residents. The plan does not define 'early evening' or 'high quality food and drink,' and it is noted that the policy test is for development to not have a significant adverse effect on amenity meaning that development having some adverse effect could still be policy compliant.

- 3.4.3 The Council's SPD on A3 uses advises that such uses will be directed to key town centres and when considering location, noise and disturbance Officers will consider the cumulative effect of similar uses in the area, the type of other uses in the area, including residential, the function of the town centre, its vacancy rates and any wider economic and social benefit of development.

3.5 Assessment

- 3.5.1 The main issues pertinent in the assessment of the proposal are;

- The Principle of Development
- Whether an extension of opening hours would harm amenity and if so, whether the harm is within acceptable limits or can be made acceptable through the use of conditions.

3.6 Principle of Development:

- 3.6.1 Members will be aware that the principle of operating an A3 unit in this location has been established through the 2010 permission for change of use from A1. At that time it was considered that an A3 use would not harm the vitality or viability of the town centre, that the location had a high degree of accessibility by public transport and that the unit was more than 40 metres from the principal elevation of any building used solely as a dwelling or self-contained flats when measured along the public highway. Therefore the only question to be answered in this assessment is whether the additional evening opening hours from 18:00 to 23:30 would cause harm to the amenity of the area, including residential amenity and if so, whether any harm is within acceptable limits, can be made acceptable through the use of conditions, or whether it is outweighed by economic or social considerations.

- 3.6.2 Members should also be mindful that the premises benefits from an existing A3 consent with the only condition being its opening hours. Subject to licence, any operator could without further planning permission and between the hours of 08:00 to 18:00 Monday to Saturday, serve hot food and alcoholic drinks for consumption on the premises including any land outside the front of the premises that is not public highway, play live or recorded music both inside and outside the premises, and have customers congregating outside. Therefore if members are minded to refuse consent they would have to be satisfied that the risk of this activity occurring between the hours of 18:00 and 23:30, to the extent that significant harm to local amenity occurs, outweighs the location of the premises within a key town centre and the economic benefits of bringing a vacant commercial unit back into use; and that no conditions could be imposed that would mitigate this risk.
- 3.7 Whether an extension of opening hours would harm amenity:
- 3.7.1 The Council's SPD on A3 uses only seeks to prevent such uses where they are less than 40 metres from the principal elevation of a dwelling house or a building used solely for self-contained flats. Therefore no presumption against such development exists where buildings are in mixed commercial and residential use and flats exist above the commercial units. As a result there is an implicit acceptance within the SPD that premises in mixed commercial and residential use should not expect the same standards of amenity as wholly residential buildings and a heightened level of noise and activity at these premises may not necessarily be harmful to amenity. People who choose to live within mixed commercial and residential buildings and within key town centres should expect a level of evening activity greater than those living in primarily residential areas.
- 3.7.2 For residential units within the same building, the SPD focuses on minimising noise and disturbance by controlling internally generated disturbances. Therefore the use of conditions to increase the level of soundproofing between units, and to ensure that no hot food is prepared until a suitable extraction system to control smell is installed, are recommended within the SPD. There is no reason to suggest that such measures could not be accommodated here. Further conditions can be applied to ensure that self closing external doors are installed, that no music is played or relayed outside the building after 21:00, that no outside area is used for eating or drinking after 21:00, that windows and doors are kept shut (except for access and egress) after 21:00 and that no disposal of waste into external containers takes place between 21:00 and 07:00.
- 3.7.3 Through the use of such conditions, a reasonable balance can be struck between allowing the business to operate commercially whilst minimising noise and disturbance to neighbouring amenity. It is almost impossible to prevent people congregating and smoking outside a premises, however by preventing eating and drinking outside after 21:00 hours the risk of large groups congregating and for prolonged periods later in the evening would be minimised.
- 3.7.4 Local residents have raised the question of cumulative impact on noise, disturbance and anti-social behaviour arising from an additional late night use within the area. There are two existing A3/A4 units within 50 metres of the site, The Ship Inn public house which is open until midnight and Whitt's End wine bar which is open until 23:30 and there will be a degree of disturbance from these premises later in the evening. For comparison, the floor area of Whitt's End is approximately 150 square metres, the Ship Inn is approximately 250 square metres whilst the area of the Hoylake Lights is 440 square metres. This is approximate and includes back of house areas and does not include any licensed area on upper floors but indicates the larger scale of these units when compared to the 75 square metres of the application site, half the size of Whitt's End. As such the capacity of the application site will be much less and with responsible management the likely noise and disturbance would be less than that experienced from nearby premises. Therefore, whilst there may be some additional evening noise and disturbance for residents within the locality, it should not be significant in scale and duration, going beyond what could be expected in a key town centre location.
- 3.7.5 Whilst the applicant has proposed extending the hours to 23:30 throughout the week, given the proximity of the residential unit above and having regard to World Health Organisation night time hours where noise levels are expected to be significantly less, Officers propose to limit the opening hours to 23:00 which accords with the WHO defined night time hours of 23:00 to 07:00. Such a restriction would also stagger the closing times of A3/A4 uses in the immediate vicinity reducing the potential for a concentration of activity and noise later in the

evening and ensuring that a planning approval for later hours at this unit does not materially exacerbate any existing situation later into the evening than 23:00. Reducing the available opening hours by half an hour from that originally proposed would not be considered to materially prejudice the commercial viability of the business.

- 3.7.6 On the basis of the above considerations, Officers recognise that evening opening at these premises will have a material effect on amenity at nearby premises but the small scale of the unit along with the use of conditions can reduce any harm to the extent that a significant adverse effect on amenity should not occur, in accordance with policy HS5 of the Hoylake Neighbourhood Plan. Preventing any outdoor music, eating or drinking after 21:00 will allow the scheme to meet Neighbourhood Plan objectives of enhancing the early evening economy and activity within the town centre, whilst minimising the risk of excessive noise and disturbance later in the evening.
- 3.7.7 Therefore, having regard to the location of the site and the proposed conditions to mitigate harm, Officers conclude that allowing later hours at this unit will have economic benefits to Hoylake by bringing an empty unit back into use without causing significant harm to the amenity of the area or local residents when considering the already heightened level of noise and activity within this town centre location. As such the application is recommended for approval. In reaching this conclusion Officers are mindful that no objections were raised to the development from the Environmental Protection team and that other consent regimes, particularly licensing, exist to protect local residents from nuisance from commercial premises. Along with planning, these other regimes have enforcement processes to ensure that any nuisance to neighbouring residents is prevented.

Summary of Decision:

Having regards to the individual merits of this application the decision to grant Planning Permission has been taken having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national policy advice. In reaching this decision the Local Planning Authority has considered the following:-

Having regard to the location of the site within the key town centre of Hoylake, the small scale of the unit and the proposed conditions, the extension of evening opening hours to 23:00 at this A3 premises is not expected to cause significant adverse effect on the amenities of the local area and neighbouring residents. As such the application meets the relevant requirements of the Wirral Unitary Development Plan and the Hoylake Neighbourhood Plan and is considered to represent sustainable development.

Recommended Approve
Decision:

Recommended Conditions and Reasons:

1. The premises shall only be open to customers and other visiting members of the public between the hours of 08:00 and 23:00

Reason: In the interests of amenity and to accord with the objectives of saved policies SH1 and PO3 of the Wirral Unitary Development Plan.

2. The use hereby permitted shall not commence trading until:

- i) A scheme of noise insulation between the ground floor and first floor accommodation has been submitted to and approved in writing by the Local Planning Authority and thereafter installed in accordance with the approved details; and
- ii) All external doors to the premises have been fitted with self-closing mechanisms.

Thereafter the noise insulation and self-closing mechanisms shall be retained.

The details of the noise insulation scheme shall adhere to 'Building Regulations Approved Document E - Resistance to the Passage of Sound' or any updates to or replacement for that document.

Reason: In order to minimise harm to residential amenity through the transference of internally generated noise in accordance with saved policies SH1 and PO3 of the Wirral Unitary Development Plan.

3. After 21:00 hours on any day of the week:

- i) No external area shall be used for the purposes of eating or drinking;
- ii) No music shall be played in, or relayed to, any external area; and
- iii) All external windows and doors shall be kept closed, except for the purposes of access and egress.

Reason: In the interests of amenity and to accord with the objectives of saved policies SH1 and PO3 of the Wirral Unitary Development Plan.

4. There shall be no disposal of waste into external containers between the hours of 21:00 and 07:00.

Reason: In the interests of amenity and to accord with the objectives of saved policies SH1 and PO3 of the Wirral Unitary Development Plan.

5. No hot food shall be prepared on the premises until:

- i) A scheme of fume extraction has been submitted to and approved in writing by the Local Planning Authority; and
- ii) The fume extraction equipment has been installed in accordance with the approved details and is available for use.

Thereafter the fume extraction equipment shall be retained.

When designing the fume extract system reference should be made to the Defra document 'Guidance on the control of odour and noise from commercial kitchen exhaust systems.'

Reason: To minimise the risk of harm to residential amenity by way of cooking odour in accordance with saved policy SH1 of the Wirral Unitary Development Plan.

Further Notes for Committee:

Last Comments By: 06/03/2019

Expiry Date: 27/03/2019